

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Hebert	Team: Squad #2	CCRB Case #: 201806120	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/24/2018 11:00 PM	Location of Incident: West 135th Street and St. Nicholas Avenue (St. Nicholas Park)	Precinct: 26	18 Mo. SOL 1/24/2020	EO SOL 1/24/2020	
Date/Time CV Reported Fri, 07/27/2018 2:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/27/2018 2:05 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Billendy Delinois	02694	936461	026 PCT
2. POM Ian Deabreu	25167	963004	026 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Sergio Hidalgo	00000	906458	026 PCT
2. SGT Joseph Angelone	00718	941349	026 PCT
3. POM Brian Stanton	11683	949693	026 PCT
4. POM Luke Davis	12464	963479	026 PCT
5. POM Andrew Hong	03576	953972	PSA 7
6. POM Derek Atwood	15279	956400	026 PCT
7. POM Andrew Chang	09035	963451	026 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Billendy Delinois	Force: Police Officer Billendy Delinois used physical force against § 87(2)(b)	
B.POM Ian Deabreu	Force: Police Officer Ian DeAbreu used physical force against § 87(2)(b)	
C.POM Billendy Delinois	Force: Police Officer Billendy Delinois restricted § 87(2)(b)'s breathing.	
D.POM Billendy Delinois	Discourtesy: Police Officer Billendy Delinois acted discourteously toward § 87(2)(b)	

Case Summary

On July 27, 2018, § 87(2)(b) called the CCRB to file this complaint.

On July 24, 2018, at approximately 11:00 p.m., § 87(2)(b) entered St. Nicholas Park in Manhattan. Police Officer Billendy Delinois and Police Officer Ian DeAbreu, both of the 26th Precinct, told § 87(2)(b) that the park was closed. Police Officer Delinois and Police Officer DeAbreu used physical force against § 87(2)(b) by grabbing his wrists and taking him to the ground (**Allegations A and B – Force – Physical Force**, § 87(2)(g)). While § 87(2)(b) was on the ground, Police Officer Delinois allegedly put his knee on § 87(2)(b)'s head, which allegedly restricted § 87(2)(b)'s breathing (**Allegation C – Force – Restricted breathing**, § 87(2)(g)). Police Officer Delinois and Police Officer DeAbreu handcuffed § 87(2)(b) and placed him under arrest for criminal trespassing and resisting arrest (Board Review 01). After § 87(2)(b) asked officers to pick it up from the ground, Police Officer Delinois allegedly kicked § 87(2)(b)'s sweater aside (**Allegation D – Discourtesy -- Action**, § 87(2)(g)).

The NYPD provided video footage from body-worn cameras belonging to Police Officer DeAbreu (Board Review 02 and 03), Police Officer Delinois (Board Review 04 and 05), Sergeant Joseph Angelone (Board Review 06), and Police Officer Erik Limardo (Board Review 24), all of the 26th Precinct. They are attached to IAs # 18 through # 23, and summarized in IAs # 51 through #56 (Board Review 07-12), and the relevant portions are embedded in the relevant sections below.

Findings and Recommendations

Allegation (A) Force: Police Officer Billendy Delinois used force against § 87(2)(b)

Allegation (B) Force: Police Officer Ian DeAbreu used force against § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on August 20, 2018. On September 12, 2018, § 87(2)(b) provided a follow-up telephone statement (Board Review 13). Police Officer Delinois and Police Officer DeAbreu were interviewed at the CCRB on September 19, 2018.

It is undisputed that, after refusing to provide his identification to Police Officer Delinois and ignoring Police Officer Delinois telling him to stop, § 87(2)(b) physically resisted by pulling his arms away as Police Officer Delinois attempted to grab his wrists and handcuff him. It is undisputed that Police Officer Delinois forcibly took § 87(2)(b) to the ground while attempting to arrest him.

§ 87(2)(b) stated that, after refusing to fulfill Police Officer Delinois' request for identification, he walked away from the officers. Police Officer Delinois caught up to § 87(2)(b), grabbed his left wrist, and twisted his left arm upward and toward his back. In response, § 87(2)(b) "defended himself" (although he refused to specify how he did so during his CCRB interview) and began "tussling" with Police Officer Delinois. Police Officer Delinois tried to grab § 87(2)(b)'s right wrist and § 87(2)(b) responded by pulling his arm away. After catching up to them, Police Officer DeAbreu attempted to grab § 87(2)(b)'s right wrist and place it behind his back, but § 87(2)(b) pulled his arm away. Police Officer Delinois, while still holding § 87(2)(b)

§ 87(2)(b)'s left wrist, grabbed § 87(2)(b) from behind, making contact with § 87(2)(b)'s torso near his rib cage, and "slammed" § 87(2)(b) onto the ground.

§ 87(2)(b) alleged that he sustained multiple injuries as a result of this incident, and he provided the CCRB with photos that he took to depict the injuries (attached to IAs # 36-41). § 87(2)(b) alleged that he sustained "scars" behind his left ear (Board Review 15-16), "scars" on the right side of his forehead (Board Review 17), what he suspected to be a "hairline fracture" to his left wrist (Board Review 18), bruises on his right leg (Board Review 19), and bruises on his right shoulder and right upper arm (Board Review 20).

After being released from police custody, § 87(2)(b) went to § 87(2)(b) Hospital on multiple occasions to seek treatment for injuries he sustained during this incident. § 87(2)(b)'s medical records from § 87(2)(b) (Privileged Documents) were obtained. § 87(2)(b)'s medical records from his § 87(2)(b) visit state that, after § 87(2)(b) complained of shoulder pain, abrasions to his right knee, and a small hematoma on his right forehead, the nurse noted that she observed no "obvious injury." Upon exam, § 87(2)(b) presented with mild tenderness to palpation over his right lower ribs. Ultimately the doctor's assessment was that § 87(2)(b)'s symptoms and physical exam were consistent with right chest wall contusion. An X-ray of § 87(2)(b)'s right ribs was also obtained, and the findings state that no acute rib fracture was observed. Also on § 87(2)(b), upon exam, § 87(2)(b)'s left distal radial wrist was tender to palpation and showed mild swelling. The doctor's conclusion was that he had a left hand/wrist contusion with no vascular impairment. Radiographs of § 87(2)(b)'s left forearm, left wrist, and left hand taken on § 87(2)(b) showed no evidence of a fracture (to either the forearm, wrist, or hand) and no evidence of dislocation in the wrist or hand. On § 87(2)(b) § 87(2)(b) went to the hospital for a subsequent visit requesting that his thumb be splinted. During that visit, doctors diagnosed him with a "closed nondisplaced left scaphoid fracture" due to clinical evidence of one being present and in spite of a lack of radiological evidence, and he was treated with a thumb spica splint.

Police Officer Delinois stated that he told § 87(2)(b) multiple times he was going to place him under arrest. § 87(2)(b) ran away and Police Officer Delinois followed him. When Police Officer Delinois reached § 87(2)(b) he grabbed at § 87(2)(b)'s hands. In response, § 87(2)(b) used one hand to push Police Officer Delinois' hand away or "slightly" push Police Officer Delinois' shoulder. Police Officer Delinois, still trying to grab § 87(2)(b)'s hand, told § 87(2)(b) to place his hands behind his back "numerous" times. In response, § 87(2)(b) physically resisted by refusing to place his hands behind his back and by moving his hands to the front of his body and between his legs. After he grabbed § 87(2)(b) both of them "staggered" down the stairs, at which point he conducted a "forcible takedown" by pulling § 87(2)(b)'s hand down toward the ground. When § 87(2)(b) went to the ground, Police Officer Delinois was holding onto one of § 87(2)(b)'s hands and was not making physical contact with any other part of § 87(2)(b)'s body, including § 87(2)(b)'s torso. § 87(2)(b) landed on his side on the ground.

Police Officer DeAbreu stated that when he reached Police Officer Delinois and § 87(2)(b) was on his knees and Police Officer Delinois was holding onto one of § 87(2)(b)'s arms and was having trouble grabbing onto § 87(2)(b)'s other arm. Subsequently, when Police

Officer DeAbreu tried to grab § 87(2)(b)'s arm, § 87(2)(b) tried to “flail” his arm by pulling his arm away. Police Officer DeAbreu did not recall seeing Police Officer Delinois perform any sort of “forcible takedown.” Police Officer DeAbreu stated that the “forcible takedown” that Police Officer Delinois described in § 87(2)(b)'s arrest report was “probably” referring to something that occurred before Police Officer DeAbreu reached the two of them.

Video footage capturing this part of the incident, recorded by Police Officer Delinois’ and Police Officer DeAbreu’s body-worn cameras, does not have audio for most of this part of the incident. Excerpts of Police Officer DeAbreu’s footage, which is clearer, is embedded below. Police Officer DeAbreu’s footage shows Police Officer Delinois circling around § 87(2)(b) to stand behind him, then Police Officer Delinois grabbing § 87(2)(b)'s right forearm as § 87(2)(b) leans forward against the stair railing. The audio captures Police Officer DeAbreu telling § 87(2)(b) to put his hands behind his back. Police Officer Delinois’ footage only shows that Police Officer Delinois approaches § 87(2)(b) and a physical struggle ensues.



201806120_20181112_1910_DM.mp4

Video footage of what occurred subsequently was recorded by Police Officer Delinois’ and Police Officer DeAbreu’s body-worn cameras. An excerpt of Police Officer DeAbreu’s footage, which is clearer than Police Officer Delinois’ footage, is embedded below. In the video, § 87(2)(b) is initially standing, and a physical struggle ensues, but it is unclear what exactly happens. At the end of the video, § 87(2)(b) and Police Officer Delinois are both on the ground. It is unclear how they ended up on the ground. The audio in this footage does not begin until it appears that § 87(2)(b) is on the ground.



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NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody (Board Review 14).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: Police Officer Billendy Delinois restricted § 87(2)(b)'s breathing.

§ 87(2)(b) stated that while he was on the ground, Police Officer Delinois placed his knee on the left side of § 87(2)(b)'s head, behind his left ear, and applied pressure using “all of his body weight,” § 87(2)(b) yelled, “I can’t breathe!” According to § 87(2)(b) his breathing was restricted by Police Officer Delinois forcing § 87(2)(b)'s arm behind his back and placing his knee on § 87(2)(b)'s head so that it was pressed against the concrete.

Police Officer Delinois stated that after § 87(2)(b) landed on the ground, he lay on his side, with

Police Officer Delinois in front of him. Police Officer Delinois' knee was making contact with the ground and not § 87(2)(b). Police Officer Delinois tried to grab § 87(2)(b)'s hands to put them behind § 87(2)(b)'s back. Police Officer Delinois only used his hands and no other part of his own body to make physical contact with § 87(2)(b) while he was on the ground. § 87(2)(b) "would not" place the hand that Police Officer Delinois was trying to handcuff behind his back, and § 87(2)(b) placed his other hand underneath himself. § 87(2)(b) did not make any other movements while on the ground. Police Officer Delinois and Police Officer DeAbreu were eventually able to handcuff § 87(2)(b) while he was on the ground, with each of them grabbing an arm, pulling it behind his back, and placing the handcuff on. Police Officer Delinois did not use any parts of his body to restrain § 87(2)(b) or keep him on the ground. Police Officer Delinois' knee was not on § 87(2)(b) and it never made contact with § 87(2)(b)'s neck, back, or head. Police Officer Delinois did not see any officer on scene ever make contact with § 87(2)(b)'s neck or back. § 87(2)(b) said, "You're choking me," but Police Officer Delinois did not know what § 87(2)(b) was referring to, because both Police Officer Delinois and Police Officer DeAbreu were "nowhere near § 87(2)(b)'s head area" at the time.

Police Officer DeAbreu described § 87(2)(b) while on the ground, as "flailing" his arms by pulling them away from officers as they tried to grab them. Police Officer DeAbreu denied that either he or Police Officer Delinois ever placed a knee on § 87(2)(b)'s back, head, or neck area. Police Officer DeAbreu also denied making any other physical contact with § 87(2)(b)'s neck or back and he denied observing Police Officer Delinois do so either. Police Officer DeAbreu denied that § 87(2)(b) ever stated that an officer should get off of his neck or that they were "choking him."

Police Officer DeAbreu's body-worn camera footage, an excerpt of which is embedded below, does not clearly show § 87(2)(b) and Police Officer Delinois during the entirety of the time that § 87(2)(b) is on the ground. Police Officer Delinois' body-worn camera footage does not precisely capture any of the actions that Police Officer Delinois took while § 87(2)(b) was on the ground because his camera became detached from his uniform and was pointed up at the sky during this part of the incident.



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35 seconds into the clip, § 87(2)(b) says, "You're choking me," "He's choking me." 49 seconds into the clip, § 87(2)(b) says, "Tell him to get off my neck," and "Why does he gotta be on my neck like this for?" However, given the camera angle, the camera movement, and the lighting conditions, it is unclear whether Police Officer Delinois or Police Officer DeAbreu is making contact with § 87(2)(b)'s body in a way that might restrict his breathing. Police Officer Delinois' body-worn camera was on the ground pointed upward, capturing mostly the sky, during this time.

It is unclear from the video footage whether Police Officer Delinois' knee made contact with § 87(2)(b) or whether he made physical contact in any other manner that could reasonably have restricted his breathing. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (D) Discourtesy: Police Officer Billendy Delinois acted discourteously toward

§ 87(2)(b)

§ 87(2)(b) stated during his CCRB interview that after he was placed under arrest, he asked the officers on scene if they could pick up his sweater from the ground. He then saw one of the officers who had recently arrived on scene (not Police Officer Delinois or Police Officer DeAbreu) kick his sweater aside. During his follow-up telephone statement, however, § 87(2)(b) stated that Police Officer Delinois was the officer who kicked his sweater aside.

Police Officer Delinois stated that § 87(2)(b) mentioned looking for his phone and his sweater during the incident. When escorting § 87(2)(b) after his arrest, Police Officer Delinois looked around but did not see anything on the ground, including § 87(2)(b)'s sweater or phone.

Police Officer DeAbreu did not observe any interaction involving officers and § 87(2)(b)'s sweater on the ground.

None of the body-worn camera footage shows any officer kicking § 87(2)(b)'s sweater.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 21).
- Police Officer Delinois has been a member of service for thirteen years, and has been a subject in four allegations in three prior CCRB complaints, none of which were substantiated. § 87(2)(g)
- Police Officer DeAbreu has been a member of service for one year and has not been a subject in any prior CCRB complaints.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On November 12, 2018, an inquiry was sent to the Comptroller's Office of the City of New York to determine whether a Notice of Claim was filed for this incident. The inquiry returned negative results (Board Review 22).
- According to the Office of Court Administration, § 87(2)(b) has no criminal history (Board Review 23).

- § 87(2)(b) [Redacted]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date